THE HON'BLE MRS JUSTICE T MEENA KUMARI
AND
THE HON'BLE MS. JUSTICE G ROHINI

Writ Petition No. 27072 of 2007

Dated: December 18, 2007

Between:

M/s. Gold Fields, Industrial Estate, Nellore
Rep. By its Managing Partner, Mr B Krishna Kumar

...

Petitioner
and

1. **The Commercial Tax Officer No.II, Nellore**
   And others.

..Respondents

THE HON'BLE MRS JUSTICE T MEENA KUMARI
AND
THE HON'BLE MS. JUSTICE G ROHINI

Writ Petition No. 27072 of 2007

ORDER(per the Hon'ble Mrs. Justice T Meena Kumari):

Seeking a writ of mandamus, declaring action of the first respondent in insisting upon for payment of tax though the statutory appeal and stay application pending before the appellate authorities as arbitrary and illegal and to consequently grant stay of collection of balance disputed demand amount of Rs.2,86,305/- as against the total

disputed demand of Rs. 3,58,529/- for the assessment year 2003-04, pending disposal of the appeal before the second respondent , the petitioner filed this writ petition.

The petitioner is a Partnership concern carrying on business in JCB Parts, JCB machines, tractor parts, motor cycles and parts thereof and harvester parts and is a dealer on the rolls of the first respondent under the Andhra Pradesh Value Added Tax Act, 2005 and for the assessment year 2003-04 the assessment was completed by the first respondent.

While so, the first respondent suo mottu proposed to revise the assessment levying tax on the amounts warranty claims and issued notice to the petitioner. The petitioner pursuant to the notice filed detailed objections. But the first respondent without considering the objections of the petitioner confirmed the reassessment by proceedings dated 12-07-2007. The petitioner, aggrieved against the re-assessment proceedings of the 1st respondent, filed appeal before the second respondent and also filed application seeking stay of collection of disputed demand, but the second respondent by proceedings dated 18.9.2007 rejected the stay application without considering any contentions of the petitioner.

The petitioner also preferred revision application before the 3rd respondent against the orders of the 2nd respondent and the same was

numbered as LV(4)809/2007 and heard and reserved for orders by the 3rd respondent on 4.12.2007 and meanwhile the 1st respondent is threatening to take coercive steps for recovery of the disputed demand. The petitioner has paid more disputed tax as the balance payable is Rs.2,86,305/- as against total disputed demand of Rs.3,58,529/-. It is also stated in the affidavit that the reassessment of the 1st respondent is barred by limitation. Thus, the balance of convenience lies in granting the stay, pending disposal of the appeal before the 2nd respondent. Hence the present writ petition.

The controversy is that pending an appeal, application for stay was dismissed by the Competent Authority and revision preferred there from was also rejected. We have gone through the record. We feel that the interest of justice would have been met if stay was granted pending Appeal, subject to deposit of 50% of the liability. Therefore, we set aside the order of the Authority and direct that 50% of the disputed demanded amount shall be paid by the petitioner within a period of **six weeks** from the date of receipt of a copy of this order. For such period, there shall be an unconditional stay and stay shall continue till disposal of the appeal, provided the amount is deposited within the stipulated time. The deposit of amount shall be without prejudice to the rights of the petitioner in appeal. If any amount has already been paid by the petitioner, the same shall be given credit.

The writ petition is accordingly disposed of. No costs.

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T MEENA

KUMARI J

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G ROHINI, J

Dt. 18.12.2007
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THE HON'BLE MRS. JUSTICE T. MEENA KUMARI
And
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W.P. No. 22819 of 2007

(Order of the Division Bench delivered by the Hon'ble Mrs. Justice T Meena Kumari) :

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18th December 2007